IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7830 OF 2004

ICICI Bank Limited. .. Petitioner

Vs.

Maharashtra Rajya Rashtriya
Kamgar Sangh & Anr. .. Respondents

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S/Shri C.U.Singh with Chetan Kapadia and Faisal Sayyad i/b M/s.Manilal Kher Ambalal & Co. for the petitioner.

Shri L.R.Mohite for Respondent No.1.

Shri P.K.Rele, Senior Advocate, with Shri P.N.Anaokar for Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 21st SEPTEMBER, 2004.

P.C.

1. Heard the learned advocates for the parties.

The petitioner challenges the order dated 4th September, 2004 passed by the Industrial Court, Thane, in Complaint (ULP) No.139 of 2004 on various grounds including the ground relating to the absence of jurisdiction to the Industrial Court to deal with the issue regarding entitlement of the petitioner to exercise a right to claim its lien over the equity share certificates in possession with the petitioner

in view of the provisions of law comprised under Section 171 of the Indian Contract Act as also under the Agreement between the petitioner and the respondent - company, and particularly Clause 3.1 under Article III relating to security in relation to fresh loan granted to the company even though the shares which were directed to be delivered back to the company by the impugned order were originally deposited with the petitioner bank in relation to the loan which had already been cleared. Reliance is sought to be placed in that regard in the decision of the Apex Court in the matter of **Syndicate Bank v. Vijay Kumar & Ors.,** reported in (1992) 2 SCC 330 and **Narendra Kumar Maheshwari v. Union of India & Ors.,** reported in 1990 (Supp) SCC 440. On the other hand, the learned advocates appearing for the respondents have strenuously opposed the admission of the petition while drawing attention to the decision of the Apex Court in the matter of **Workers of M/s.Rohtas Industries Ltd. v. M/s.Rohtas Industries Ltd.,** reported in 1987 I CLR 420. It has also been submitted on behalf of the respondents that the so called Clause 3.1 of the agreement merely speaks about the entitlement of a company to create a charge over immovable properties and in the absence of a specific charge being framed, nor it has been disclosed at any point of time that the shares were held by the

respondent-company as banker's lien in relation to a fresh loan facility granted to the company, there is no case made out for interference in the impugned order.

2. On behalf of the company, attention was also drawn to the order passed by the learned Single Judge earlier in these proceedings on 16th July, 2004 in Writ Petition Stamp No.1953 of 2004 while contending that the point of absence of jurisdiction to the Industrial Court was never raised and by the said order, only direction was given to the effect that no order should be passed by the Industrial Court without the petitioner being made party to the proceedings or being heard in the matter.

3. It is well settled that the Courts or Tribunals established under the special statutes cannot travel beyond the scope of jurisdiction given to them under the statutes and they can deal with the issues squarely fall within the parameters of the scope of powers given to such Courts. Undisputedly, the impugned order prima facie discloses a finding that the respondent No.4 has no legal right to claim its lien over the equity share certificates which are in their custody, and on the basis of the said finding, direction has been issued against the

petitioner to deposit the said certificates either in the court or to return them to the respondent-company. Undoubtedly, the Apex Court in **Rohtas Industries case (supra),** has observed that the workers contributed their labour and it is the result of their hard-work that the stocks could be produced and, therefore, it could not be said that the wages and emoluments payable to the workers would not rank in priority. At the same time, it should not be forgotten that the said observations were made in the facts which were revealed from the decision of the Apex Court in paragraph 3, which reads thus:-

> "It is no doubt true that these products the stock of which have been shown in the report and the value of which has been shown by the Liquidator as Rs.91,77,000/- is pledged with Banks, is a priority in law in favour of the Banks but it also could not be disputed that these stocks were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard-work that these stocks could be produced and in our opinion, therefore, it could not be said that the wages and emoluments for the period upto closure would not rank in priority. It is also

> significant that after the closure in July, 1984, till today inspite of the order passed by this Court the workers have not been paid. Their subsistence and living is also perhaps of paramount importance and has to rank with highest priority. It is in view of this as it appears, that the Government of India is keen to have a scheme for revival of this industry. Learned counsel for the State of Bihar also frankly conceded that so far as payment to the workers is concerned, the State Government also desires that they should be paid their salaries."

The observations regarding the priority in relation to the claim of the labour in Rohtas Industries case were made, based on the facts of the said case. Be as it may, the fact remains that the Apex Court in **Syndicate Bank's case (supra),** after taking note of the various provisions of law relating to the general lien, has observed thus:-

> "The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking

> business and that the general lien is a valuable right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection."

Though, it was sought to be contended that the absence of jurisdiction to deal with the issue relating to the claim of the respondent No.4 pursuant to its rights based under Section 171 of the Indian Contract Act and to retain the possession of the shares towards the securities for the fresh loan granted to the respondent-company was not specifically raised before the Industrial Court, it is well settled that the jurisdiction cannot be bestowed upon a Court merely by consent or by silence on the part of one of the parties to raise issue in that regard. If the Court lacks jurisdiction to deal with a particular issue, no amount of consent by the parties or failure on the

part of one of the parties to raise issue in that regard at the original stage of the proceedings would empower the Court to decide such issue. Besides, it is purely a question of law and failure on the part of the petitioner to raise the issue before the Industrial Court will not debar it from raising such issue for the first time even in the writ petition.

4. Considering the above circumstances, therefore, prima facie case is made out for grant of relief prayed for, interim relief in terms of prayer clause 10(b).

5. At the same time, it is to be noted that the records apparently disclose that the workers of the respondent-company have their claim regarding wages for a considerable period of time, and, therefore, the matter needs to be expedited, and hence, the petition to be fixed for final hearing on 6th December, 2004.

6. S/Shri Mohite, the learned advocate for the respondent No.1 and Rele, the learned senior advocate with Anaokar, for the respondent No.2 waive service.